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Written Testimony Opposing Senate Bill No. 262, An Act Requiring Notice by Psychiatrists Concerning Patients That May Pose a Threat to Themselves or Others

Senator Gerratana, Representative Johnson and distinguished members of the Public Health Committee, I am David McGuire, staff attorney for the American Civil Liberties Union of Connecticut. Thank you for accepting this testimony in opposition to Senate Bill No. 262, An Act Requiring Notice by Psychiatrists Concerning Patients That May Pose a Threat to Themselves or Others.

We support this bill's intent to protect the public but there is good reason to believe it would have the opposite effect, interfering with the very treatment needed to prevent violence in some cases. Because the U.S. Supreme Court has recognized that the privacy rights implicit in the Fifth and Fourteenth amendments extend to the doctor-patient relationship, we urge you to consider carefully whether it is sensible to interfere with that relationship absent any real benefit to public safety.

The American Psychological Association has warned against mandatory duty-to-warn laws, instead favoring an approach that leaves mental health professionals to use their expert judgment, in accordance with their rules of ethics, to decide when to report potentially dangerous patients to the proper authorities. The state of Connecticut already permits psychiatrists to breach patient confidentiality when they perceive that a patient poses an imminent risk of injury to himself or others or of damage to the property of others. And a psychiatrist who fails to report such an imminent risk is subject to civil liability.

The American Psychological Association cautions, however, that mandatory duty-to-warn laws may deter mental health patients from engaging in full disclosure during treatment or even prevent them from seeking treatment at all. Trust and confidence between psychiatrist and patient are vital to successful treatment, but patients are likely to lose trust if their communications are not kept confidential. If they don't disclose violent thoughts and impulses, their psychiatrists can't provide them with effective help.

Furthermore, such laws could discourage psychiatrists from accepting potentially violent patients for fear of their own potential criminal liability. A decline in the number of psychiatrists available to treat patients with violent ideation, combined with the fears of patients that they will be turned over to police, would inevitably lead to a decline in treatment. Less treatment is likely to result in more violence, not less.

A recent study by a researcher at Emory University confirmed as much. The study found that the homicide rate increases after mandatory duty-to-warn laws are enacted.¹ The study looked at states across the country both before and after implementation of mandatory duty-to-warn laws and found that, with all other factors being equal, such laws caused an increase in the homicide rate of 5 percent.² The study concluded by suggesting that a discretionary duty, which Connecticut already has, or no duty at all should lead to a decrease in the homicide rate.³

Knowing that a breach in confidentiality between patient and psychiatrist is a serious matter that can harm the patient and the public, I ask you to leave that decision in the hands of mental health professionals, where it belongs. I respectfully ask you to reject this legislation.

¹ Griffin Edwards, *Doing Their Duty: An Empirical Analysis of the Unintended Effect of Tarasoff v. Regents on Homicidal Activity*, Emory University (2011) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1544574.

² *Id.* at 22

³ *Id.* at 27